

1 The Honorable Richard A. Jones  
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UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

10 UNITED STATES OF AMERICA,  
11 Plaintiff,  
12 v.  
13 CHANGPENG ZHAO, aka "CZ,"  
14 Defendant.

15 NO. CR23-179 RAJ

**UNITED STATES' SENTENCING  
MEMORANDUM**

16 **INTRODUCTION**

17 "Better to ask for forgiveness than permission." That's what Defendant Changpeng  
18 Zhao, founder, owner, and Chief Executive Officer of Binance, the world's largest  
19 cryptocurrency exchange, told members of his team about Binance's compliance with U.S.  
20 law. Zhao and Binance specifically targeted U.S. users as part of Binance's growth  
21 strategy, knew that this choice subjected Binance to U.S. laws, but for years deliberately  
22 ran the company in violation of U.S. law. As Zhao admitted, breaking U.S. law was critical  
23 to the company's success and profitability. Zhao bragged that if Binance complied with  
24 U.S. law, it would not be "as big as we are today" and "would also not have had any US  
25 revenue we had for the last 2 years. And further, [Binance] would not have had additional  
26 revenue resulted (sic) from the network effect."

1 Zhao's willful violation of U.S. law was no accident or oversight. He made a  
 2 business decision that violating U.S. law was the best way to attract users, build his  
 3 company, and line his pockets. Despite knowing Binance was required to comply with U.S.  
 4 law, Zhao chose not to register the company with U.S. regulators; he chose not to comply  
 5 with fundamental U.S. anti-money-laundering (AML) requirements; he chose not to  
 6 implement and maintain an effective know-your-customer (KYC) system, which prevented  
 7 effective transaction monitoring and allowed suspicious and criminal users to transact  
 8 through Binance; and even when Binance employees detected suspicious transactions,  
 9 Zhao's choices meant those transactions were not reported to U.S. authorities. And when  
 10 it became clear that Binance had a critical mass of lucrative U.S. customers, Zhao directed  
 11 Binance employees in a sophisticated scheme to disguise their customers' locations in an  
 12 effort to deceive regulators about Binance's client base. Critically, Zhao knew that his  
 13 decision not to implement an effective AML program would result in Binance facilitating  
 14 transactions between U.S. users and users in Iran and other sanctioned countries and  
 15 regions in violation of U.S. law.

16 Zhao's strategy worked: Binance—operating on a Wild West model that, as one  
 17 compliance employee said, told criminals "come to binance we got cake for you"—quickly  
 18 became the colossus of crypto exchanges. As a result, Zhao is one of richest people in the  
 19 world and a celebrity in the crypto industry. Zhao bet that he would not get caught, and  
 20 that if he did, the consequences would not be as serious as the crime.

21 But Zhao was caught, and now the Court will decide what price Zhao should pay  
 22 for his crimes. The sentence in this case will not just send a message to Zhao but also to  
 23 the world. Zhao reaped vast rewards for his violation of U.S. law, and the price of that  
 24 violation must be significant to effectively punish Zhao for his criminal acts and to deter  
 25 others who are tempted to build fortunes and business empires by breaking U.S. law.  
 26 Accordingly, the United States recommends that the Court impose an above-Guidelines  
 27 sentence of 36 months of imprisonment.

## PROCEDURAL BACKGROUND

Zhao ran Binance, a money services business (MSB) that operated wholly or in substantial part in the United States from 2017 through 2022. Zhao willfully failed to implement an effective AML program as required by the Bank Secrecy Act (BSA). As a result of Zhao's choice, Binance processed transactions involving proceeds of unlawful activity, including funds involved in transactions between U.S. persons and persons in comprehensively sanctioned jurisdictions, in violation of U.S. sanctions.

In November 2023, Zhao entered a Rule 11(c)(1)(A) guilty plea to one count: willful failure to maintain an effective AML program, in violation of 31 U.S.C. §§ 5318(h), 5322(b), 5322(e), and 31 C.F.R. § 1022.210(a). The statutory penalties include a maximum term of imprisonment of up to ten years; a period of supervision following release of up to three years; a potential probationary period of up to five years; a fine of up to \$500,000 and, in addition, a fine equal to the profit Zhao gained by reason of the offense; and a mandatory special assessment of \$100.

As part of that plea agreement (¶¶ 12–13), under 31 U.S.C. § 5322(e), the parties agreed to recommend to the Court that Zhao would pay a fine of \$50 million. The parties further agreed (¶ 10) to the applicable Guidelines calculation except as to the applicability of USSG § 2S1.3(b)(1), which provides a two-level enhancement where “the defendant knew or believed that the funds were proceeds of unlawful activity, or were intended to promote unlawful activity.” As detailed below, that enhancement applies because Zhao knew that Binance processed funds that were proceeds of unlawful activity or were used to promote unlawful activity. With the enhancement, Zhao’s offense level is 13. At criminal history category I, his advisory Guidelines range is 12 to 18 months in prison.

But this case warrants an upward variance from that Guidelines range. The scope and ramifications of Zhao’s misconduct were massive—Binance engaged in transactions orders of magnitude larger than the BSA originally contemplated for MSBs and well beyond what the Guidelines address—and an upward variance is appropriate here to

1 account for the scale of Zhao's violation. An upward variance is further justified by the  
 2 need for Zhao's sentence to reflect the significant harm to U.S. national security caused by  
 3 his criminal acts, a circumstance also not accounted for in the sentencing range advised by  
 4 the Guidelines for his offense of conviction. A custodial sentence of 36 months—twice the  
 5 high end of the Guidelines range—would reflect the seriousness of the offense, promote  
 6 respect for law, afford adequate deterrence, and be sufficient but not greater than necessary  
 7 to achieve the goals of sentencing.

8 **FACTS**

9 Zhao violated U.S. law on an unprecedented scale. He led a massive financial  
 10 institution that, as of 2022, processed trillions of dollars in cryptocurrency trades per year  
 11 and massively profited from the U.S. financial system, U.S. businesses, and U.S.  
 12 customers—all without playing by U.S. rules. He ran Binance with deliberate disregard for  
 13 the company's legal responsibilities and for its capacity to cause significant harm, and  
 14 because of his conduct, Binance processed millions of dollars of unlawful proceeds.

15 Zhao's sentence should reflect the gravity of his crimes. Financial institutions are  
 16 the first line of defense for the U.S. financial system. Accordingly, the BSA places special  
 17 responsibilities on financial institutions, requiring them to implement AML programs that  
 18 protect the institutions themselves and the broader financial system from criminal schemes.  
 19 Because Zhao refused to implement an effective AML program, Zhao and Binance put  
 20 U.S. customers, the U.S. financial system, and U.S. national security at risk, exposing our  
 21 financial system and citizens to those who sought to exploit them, including criminal actors  
 22 seeking a safe haven for the proceeds of their unlawful activity. And because Zhao willfully  
 23 failed to implement an effective compliance program and disregarded U.S. law, Binance  
 24 caused violations of U.S. sanctions in excess of \$898 million.

1     **A. Zhao led Binance to become the world's largest cryptocurrency exchange by  
2       exploiting the U.S. market while defying U.S. law**

3       Zhao founded Binance in 2017. By 2018, Binance.com was the world's largest  
4       cryptocurrency exchange. It grew quickly to dominate the cryptocurrency space by  
5       targeting the lucrative U.S. market, particularly high-volume "VIP" customers. Zhao knew  
6       that serving U.S. customers required Binance to comply with U.S. law, including the BSA.  
7       But Zhao calculated that compliance was too expensive: Binance would have to either  
8       implement effective AML controls, including KYC measures and transaction monitoring,  
9       which would cost both money and customers who would leave Binance rather than provide  
10       required information, or offboard lucrative U.S. customers, limiting its growth.

11       Zhao knew that, as an MSB, Binance was required to implement an effective AML  
12       program that was reasonably designed to prevent Binance from being used to facilitate  
13       money laundering. An effective AML program includes an effective system for collecting  
14       identifying information about customers through KYC protocols, monitoring transactions  
15       for suspicious activity, and filing Suspicious Activity Reports (SARs) with the Department  
16       of the Treasury's Financial Crimes Enforcement Network (FinCEN). But Binance allowed  
17       certain customers (called "Tier 1" customers) to open accounts and deposit, trade, and  
18       withdraw cryptocurrency by providing only an email address. As Zhao knew, these "Tier  
19       1" customers comprised most of Binance's customers until 2022, when Binance  
20       implemented a policy requiring its customers to complete KYC. Further, as Zhao knew,  
21       for much of the relevant period, Binance did not systematically monitor transactions for  
22       suspicious activity, and Binance never filed a SAR with FinCEN.

23     **B. Because Zhao failed to implement an effective AML program, illicit actors  
24       flocked to the exchange and Binance harmed U.S. national security by  
25       violating sanctions against Iran**

26       In part because Zhao failed to implement an effective AML program at Binance,  
27       illicit actors used Binance's exchange in various ways, including operating mixing services  
      that hid the source and ownership of cryptocurrency; transacting in illicit proceeds from

1 ransomware attacks; and moving proceeds of darknet market transactions, exchange hacks,  
 2 and various internet-related scams. For example, between August 2017 and April 2022,  
 3 there were direct transfers of about \$106 million in bitcoin to Binance.com wallets from  
 4 Hydra, the world's then-largest darknet marketplace used by criminals to facilitate the sale  
 5 of illegal goods and services.<sup>1</sup> These transfers occurred over time to a relatively small  
 6 number of unique addresses—reflecting “cash out” activity by repeat Hydra users, such as  
 7 vendors selling illicit goods or services. Similarly, from February 2018 to May 2019,  
 8 Binance processed more than \$275 million in deposits and more than \$273 million in  
 9 withdrawals from BestMixer—one of the largest cryptocurrency mixers in the world until  
 10 it was shut down by Dutch authorities in May 2019.

11 Moreover, Binance’s decision not to implement an effective AML program as  
 12 required by U.S. law, despite its reliance on U.S. customers to provide liquidity for the  
 13 exchange, caused violations of comprehensive U.S. sanctions imposed to protect against  
 14 the “unusual and extraordinary threat to the national security, foreign policy, and economy  
 15 of the United States” presented by the actions and policies of the Government of Iran. *See*  
 16 Executive Order 12957, 60 Fed. Reg. 14615 (Mar. 15, 1995). The comprehensive sanctions  
 17 first imposed in 1995 and expanded by numerous subsequent executive orders, protect the  
 18 United States from these threats by effectively cutting off all U.S. commercial activity with  
 19 Iran, thereby denying the Iranian government access to the resources it requires to carry  
 20 out the activities and policies that threaten the United States.<sup>2</sup>

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 24 <sup>1</sup> The Department of Justice seized Hydra in 2022, which had received over \$5 billion in cryptocurrency between 2015  
 and 2022.

25 <sup>2</sup> See Statement of Director R. Richard Newcomb to the Senate Banking, Housing and Urban Affairs Committee (Oct.  
 26 30, 1997) (noting that E.O. 12959 on May 6, 1995, “effectively ended U.S. commercial activity with respect to Iran”),  
 27 available at <https://home.treasury.gov/news/press-releases/rr2034>; see also “U.S. Sanctions on Iran,” Congressional  
 Research Service (July 20, 2023) (noting that “U.S. sanctions on Iran are arguably the most extensive and  
 comprehensive set of sanctions that the United States maintains on any country” and that they seek “to deny the Iranian  
 government financial resources and compel it to make policy changes.”), available at  
<https://crsreports.congress.gov/product/pdf/IF/IF12452>.

1 Binance critically undermined the effectiveness of U.S. sanctions against Iran by  
2 providing its Iranian customers the ability to transact with the U.S. customers that Binance  
3 depended on to provide liquidity on the exchange. Zhao and other Binance senior leaders  
4 knew that Binance served customers both in the United States and in jurisdictions subject  
5 to comprehensive U.S. sanctions; that U.S. sanctions laws generally prohibited U.S.  
6 persons from transacting with persons in jurisdictions subject to comprehensive U.S.  
7 sanctions; that Binance's proprietary "matching engine" would necessarily cause U.S.  
8 persons to transact with persons in jurisdictions subject to comprehensive U.S. sanctions;  
9 and that Binance did not have controls in place to prevent such violations of U.S. law—  
10 because Binance chose not to collect KYC information from most of its user base or  
11 implement effective blocks based on internet protocol (IP) addresses. Because Binance  
12 chose not to implement comprehensive controls blocking transactions that violated U.S.  
13 sanctions, between in or about January 2018 through May 2022, Binance caused at least  
14 1.1 million transactions in violation of U.S. sanctions between customers in the United  
15 States and customers ordinarily resident in Iran, with an aggregate transaction value of at  
16 least \$898,618,825. Binance also caused millions of dollars in trades between U.S.  
17 customers and customers in other comprehensively sanctioned jurisdictions, including  
18 Cuba, Syria, and the Ukrainian regions of Crimea, Donetsk, and Luhansk.

19 The broad U.S. sanctions against Iran are intended to protect Americans from the  
20 threat to U.S. national security and foreign policy posed by the Iranian government's  
21 proliferation of weapons of mass destruction, state-sponsored terrorist activity, and efforts  
22 to destabilize the Middle East. Under Zhao's direction, Binance caused violations of U.S.  
23 sanctions on a significant scale that damaged U.S. national security and endangered the  
24 integrity of the international financial system.

1     **C. Zhao deceived U.S. regulators as part of his scheme to evade U.S. law**

2           As founder and CEO, Zhao built Binance as a company that attempted to operate  
 3 outside the jurisdiction of any government and cultivated a culture that disregarded  
 4 compliance with legal obligations. When Binance grew to the point it could no longer hide  
 5 from government regulation and law enforcement, Zhao and other senior leaders developed  
 6 and implemented a scheme to evade U.S. law through manipulation and deception. While  
 7 creating a public façade that Binance would play by the rules, Zhao and other senior leaders  
 8 developed and executed a plan to keep Binance’s most lucrative U.S. customers on  
 9 Binance.com to ensure Binance would continue to benefit from its U.S. customer base  
 10 without complying with U.S. law.

11           In 2018, Binance engaged a consultant who proposed various avenues through  
 12 which the Company could mitigate its regulatory exposure. Presented with a range of  
 13 options from the “low-risk” full compliance with U.S. law to the “high-risk” status quo,  
 14 Binance, at Zhao’s direction, chose a middle ground that nonetheless continued to violate  
 15 U.S. law. The scheme was simple but required significant coordination to carry out. On  
 16 one hand, Binance created a new U.S. exchange to serve U.S. customers and announced  
 17 that Binance.com would “block” U.S. persons. On the other, Binance secretly kept the most  
 18 profitable U.S. customers on Binance.com without taking steps to bring Binance.com into  
 19 full compliance with U.S. law.

20           On recorded calls in June 2019, Zhao and other Binance leaders devised the scheme.  
 21 As Zhao knew and discussed with other senior leaders, Binance.com’s approximately  
 22 11,000 VIP customers accounted for 70% of its trading revenue, and about one-third of  
 23 those VIPs were U.S. persons. Rather than lose its U.S. VIP customers, Zhao approved a  
 24 plan where employees would help the VIP customers hide their U.S. connections, including  
 25 by guiding them to create new accounts with non-U.S. KYC information. As Zhao  
 26 explained on one recorded call in June 2019, Binance sought to “achieve a reduction in our  
 27 own losses and, at the same time, to be able to have U.S. supervision agencies not cause us

1 any troubles,” with the “goal” of having “U.S. users slowly turn into . . . other users”—  
 2 though Binance “cannot say this publicly, of course.”

3 The plan worked: Binance maintained a substantial base of lucrative, liquidity-  
 4 providing U.S. customers even after launching the new U.S. exchange, Binance.US.  
 5 According to an internal monthly report, one year after purportedly blocking U.S. users, in  
 6 September 2020, Binance still had more than 2.5 million U.S. customers, more than from  
 7 any other country. The next month, to continue to conceal these connections, Binance  
 8 turned these users into “other” users by removing the United States label from this report  
 9 and recategorizing U.S. users with the label “UNKWN.” In October 2020, according to the  
 10 internal monthly report, “UNKWN” users represented about 17% of Binance’s registered  
 11 user base. And according to Binance’s own transaction data, U.S. users conducted trillions  
 12 of dollars in transactions on Binance.com between August 2017 and October 2022 that  
 13 made the company more than \$1.6 billion in profit, resulting, as Zhao acknowledged, from  
 14 U.S. users and the network effect they generated.

## 15 SENTENCING GUIDELINES CALCULATION

16 Under the plea agreement, the parties agree that these Guidelines provisions apply:

- 17 • A base offense level of 8 under USSG § 2S1.3(a)(1);
- 18 • A two-level increase for a conviction of an offense under Chapter 53 of Title 31,  
 19 United States Code, and involving more than \$100,000 in a 12-month period,  
 under USSG § 2S1.3(b)(2); and
- 20 • A four-level role enhancement under USSG § 3B1.1(a).

21 These agreed provisions would result in an offense level of 14.

22 Along with those agreed Guidelines provisions, the Court should also impose a two-  
 23 level increase under USSG § 2S1.3(b)(1) because, as discussed in the next section, a  
 24 preponderance of the evidence shows that Zhao knew or believed that at least some funds  
 25 his company processed were proceeds of unlawful activity.

26 Applying that two-level enhancement brings Zhao’s offense level to 16. If the Court  
 27 imposes that enhancement, the parties agree that Zhao may qualify for a three-level

1 reduction for acceptance of responsibility under USSG § 3E1.1(b). With acceptance-of-  
 2 responsibility credit, Zhao's total offense level is 13. At criminal history category I, his  
 3 advisory Guidelines range is 12 to 18 months in prison.<sup>3</sup>

4 **UNITED STATES' RECOMMENDATION**

5 Given the magnitude of Zhao's willful violation of U.S. law and its consequences,  
 6 an above-Guidelines sentence of 36 months is warranted.<sup>4</sup> That sentence, together with the  
 7 agreed \$50 million fine, is sufficient but not greater than necessary to balance the relevant  
 8 18 U.S.C. § 3553(a) factors and achieve the goals of sentencing.

9 **A. The Court should impose the unlawful-proceeds Guidelines enhancement**

10 The Court should impose the two-level enhancement in USSG § 2S1.3(b)(1)  
 11 because a preponderance of the evidence shows that Zhao knew or believed that at least  
 12 some funds his company processed were proceeds of unlawful activity.

13 Section 2S1.3(b)(1) imposes a two-level enhancement for BSA violations if "the  
 14 defendant knew or believed that the funds were proceeds of unlawful activity, or were  
 15 intended to promote unlawful activity." The defendant need not know or believe that all or  
 16 a significant portion of the funds were connected to unlawful activity. Instead, the  
 17 enhancement applies if the defendant knew or believed that any funds involved in the  
 18 violation were unlawful proceeds or promoted unlawful activity. *See United States v.*  
 19 *Wisniewski*, 121 F.3d 54, 57 (2d Cir. 1997) (interpreting similar enhancement in USSG  
 20 § 2S1.1(b)(1) for money laundering). Conscious avoidance can satisfy the mens rea  
 21 requirement for applying this enhancement. *See United States v. Finkelstein*, 229 F.3d 90,  
 22 95–96 (2d Cir. 2000) (also interpreting USSG § 2S1.1(b)(1)).

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 25 <sup>3</sup> If the Court does not impose the unlawful-funds enhancement, Zhao would qualify for only a two-level acceptance-of-responsibility reduction, *see* USSG § 3E1.1(a), resulting in an advisory Guidelines range of 10 to 16 months—the range proposed by U.S. Probation. PSR ¶ 144.

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 27 <sup>4</sup> The government intends to seek remand of the defendant at sentencing in the event the Court imposes a custodial sentence. *See* 18 U.S.C. § 3143(a)(1).

1 Zhao's plea agreement allows the parties to "present arguments regarding the  
 2 applicability of" this two-level enhancement. Plea Agreement ¶ 10. The government bears  
 3 the burden of proving the enhancement's applicability by a preponderance of the evidence.  
 4 *See United States v. Ehmer*, 87 F.4th 1073, 1137–39 (9th Cir. 2023); *United States v.*  
 5 *Parlor*, 2 F.4th 807, 816–17 (9th Cir. 2021). Contrary to U.S. Probation's tentative  
 6 Guidelines recommendation,<sup>5</sup> the evidence easily satisfies that standard and triggers this  
 7 enhancement.<sup>6</sup> The facts admitted by Zhao and Binance, along with the evidence and  
 8 reliable public reporting, together prove that Zhao knew that Binance did not have effective  
 9 AML controls and that, as a result, illicit actors used Binance.com to launder proceeds of  
 10 unlawful activity. The evidence also shows that Zhao knew that Binance would cause U.S.  
 11 customers to trade with customers in Iran and other countries and regions subject to  
 12 comprehensive U.S. sanctions. The funds involved in those trades, and the fees that  
 13 Binance earned from processing those trades, became proceeds of unlawful activity, and  
 14 Binance facilitated later transfers of these proceeds, including when U.S. customers closed  
 15 their accounts and withdrew their funds.

16 **1. Zhao knew Binance processed transactions involving the proceeds of**  
**17 unlawful activity**

18 First, Zhao has admitted facts supporting the enhancement, acknowledging that  
 19 Binance processed transactions that he knew or believed involved the proceeds of unlawful  
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21 <sup>5</sup> *See* PSR Addendum 8–9 & n.11 (noting that "[b]oth parties present reasonable arguments on the applicability of the  
 22 enhancement, but the research represented by all sides fails to articulate a clear standard," so not recommending the  
 23 disputed two-level enhancement, but noting that "[if] the Court finds that the *mens rea* can be satisfied by 'conscious  
 24 avoidance,' we would likely agree with the government that the evidence here meets that standard by a preponderance  
 25 of the evidence, for the reasons he government has stated").

26 <sup>6</sup> The government timely objected to the Probation Department's determination not to include the enhancement in its  
 27 Guidelines estimate, and in its Addendum the Probation Department indicates that despite the government's objection  
 28 it is not recommending the enhancement because of what the Probation Department perceives as the lack of a "clear  
 29 standard." We respectfully disagree with Probation's reasoning and urge the Court to impose the enhancement. *See*  
 30 PSR Addendum 8–9 & n.11 (noting that "[b]oth parties present reasonable arguments on the applicability of the  
 31 enhancement, but the research represented by all sides fails to articulate a clear standard," so not recommending the  
 32 disputed two-level enhancement, but noting that "[if] the Court finds that the *mens rea* can be satisfied by 'conscious  
 33 avoidance,' we would likely agree with the government that the evidence here meets that standard by a preponderance  
 34 of the evidence, for the reasons he government has stated").

1 activity. According to the facts he admitted in his plea agreement, “[a]s a result of [Zhao’s]  
 2 willful failure to implement an effective AML program, Binance processed transactions  
 3 involving proceeds of illegal activity.” Plea Agreement ¶ 9.a. As Zhao knew, “[b]ecause  
 4 Binance during the relevant period did not require all users to complete” KYC protocols  
 5 “and did not have procedures to systematically monitor transactions and report suspicious  
 6 activity, Binance lacked effective controls to prevent it from processing transactions  
 7 involving proceeds of illicit activity on behalf of its customers.” *Id.* ¶ 9.j.

8 The statement of facts in Binance’s plea agreement (Dkt. 23, Case No. CR23-178  
 9 RAJ) and public reporting analyzing blockchain activity likewise support applying this  
 10 Guidelines enhancement in Zhao’s case. The Court is free to consider the company’s plea  
 11 agreement and that reporting when sentencing Zhao. *See* 18 U.S.C. § 3661; USSG § 1B1.4.  
 12 Zhao was the founder and Chief Executive Officer of Binance.com and was significantly  
 13 involved in and responsible for decisions about Binance’s operations. Zhao personally  
 14 determined what AML standards Binance would meet, including whether it implemented  
 15 effective KYC protocols. And employees openly discussed that it was challenging to  
 16 implement AML controls because Zhao “doesn’t see a need to.” Zhao and most of the  
 17 crypto world knew that the failure to implement these controls provided an opportunity for  
 18 criminal actors to exploit Binance. Indeed, in the 2017–2022 period covered by the plea  
 19 agreement, it was well known that illicit actors used Binance to process large volumes of  
 20 proceeds of unlawful activity. That Binance was processing transactions involving illicit  
 21 funds was obvious to compliance employees and criminals alike. As one Binance  
 22 compliance employee said, “we need a banner ‘is washing drug money too hard these days  
 23 – come to binance, we got cake for you.’”

24 And in 2020, it was widely published that Binance had significant illicit transactions  
 25 in part due to its weak KYC controls. For example, in January 2020, blockchain-analytics  
 26 firm Chainalysis reported that in 2019 Binance processed \$770 million in funds from illicit  
 27 actors—representing 27.5% of all illicit funds processed by cryptocurrency exchanges,

1 more than any other exchange.<sup>7</sup> Zhao was aware of this reporting, which highlighted the  
 2 need for tighter KYC procedures at crypto exchanges including Binance.<sup>8</sup> Regardless of  
 3 whether Zhao believed that the public reporting was accurate in all respects, it underscores  
 4 what Zhao already knew and believed; by choosing to have an ineffective AML program,  
 5 Zhao caused Binance to process criminal funds until at least October 2022.<sup>9</sup>

6 Zhao knew and understood that his decisions with respect to Binance's AML  
 7 program would likely have the result that Binance would facilitate these types of illicit  
 8 transactions. And, of course, the company has admitted that illicit actors used Binance.com  
 9 in various ways including "operating mixing services that obfuscated the source and  
 10 ownership of cryptocurrency; transacting illicit proceeds from ransomware variants; and  
 11 moving proceeds of darknet market transactions, exchange hacks, and various internet-  
 12 related scams." Binance Plea Agreement, Attachment A ¶ 56. For example, as described  
 13 above, between August 2017 and April 2022, about \$106 million worth of bitcoin was  
 14 directly transferred to Binance.com wallets from Hydra—a popular Russian darknet  
 15 marketplace often used by criminals that facilitated the sale of illegal goods and services,  
 16 in a manner indicating illicit activity. Binance Plea Agreement, Attachment A ¶ 57.  
 17 Similarly, from February 2018 to May 2019, Binance processed more than \$275 million in  
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21 <sup>7</sup> CHAINALYSIS, The 2020 State of Crypto Crime (Jan. 2020), <https://go.chainalysis.com/2020-crypto-crime-report>.

22 <sup>8</sup> See Binance CEO accuses Chainalysis of 'bad business' over AML report. Yahoo Finance.  
[https://finance.yahoo.com/news/binance-ceo-accuses-chainalysis-bad-130023983.html?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuZ29vZ2xIbmNvbS8&guce\\_referrer\\_sig=AQAAAANK8cysllSKIVszuxyEPpep5gmtPzh9dUJrbZgOCV7P59xsb2h53LETRxu4Vu9OmPq30c5GyP05qI8irHpGq-byb-RXnmeem3SIZ8xqwYC0OKtmav-R-mW1WjurPR99zfbEE7ipMBH00ac8OehsMxpvaFCH7zSPW2j-6vK77LR](https://finance.yahoo.com/news/binance-ceo-accuses-chainalysis-bad-130023983.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xIbmNvbS8&guce_referrer_sig=AQAAAANK8cysllSKIVszuxyEPpep5gmtPzh9dUJrbZgOCV7P59xsb2h53LETRxu4Vu9OmPq30c5GyP05qI8irHpGq-byb-RXnmeem3SIZ8xqwYC0OKtmav-R-mW1WjurPR99zfbEE7ipMBH00ac8OehsMxpvaFCH7zSPW2j-6vK77LR) (Jan. 20, 2020) (reporting that Zhao blamed Chainalysis for the illicit activity and thought the reporting was "bad business etiquette").

23 <sup>9</sup> A 2022 Reuters investigation suggests that Binance continued to process a significant volume of proceeds of  
 24 unlawful activity, finding that in Binance's five years of operation, the company "served as a conduit for the laundering  
 25 of at least \$2.35 billion in illicit funds." Angus Berwick & Tom Wilson, REUTERS, *How crypto giant Binance became  
 26 a hub for hackers, fraudsters and drug traffickers*, June 6, 2022, <https://www.reuters.com/investigates/special-report/fintech-crypto-binance-dirtymoney>.

1 deposits and more than \$273 million in withdrawals from BestMixer before it was shut  
 2 down by Dutch authorities in 2019. *Id.* ¶ 58.<sup>10</sup>

3 **2. Zhao knew Binance processed transactions involving the proceeds of  
 4 sanctions violations**

5 Second, the evidence also shows that Zhao knew that Binance would cause U.S.  
 6 customers to trade with customers in Iran and other countries and regions subject to  
 7 comprehensive U.S. sanctions. As Zhao admitted, Binance “caused transactions between  
 8 U.S. persons and persons in jurisdictions that are subject to comprehensive U.S. sanctions.”  
 9 Plea Agreement ¶ 9.a. Zhao admitted that he understood that U.S. law prohibited U.S.  
 10 persons from conducting certain financial transactions with countries, persons, or entities  
 11 sanctioned by the U.S. government. *Id.* ¶ 9.k. Zhao also knew that both U.S. customers and  
 12 customers in comprehensively sanctioned jurisdictions used Binance.com. And Binance  
 13 employees, including the then chief compliance officer, specifically warned Zhao about  
 14 legal risks related to transactions involving such U.S. customers and customers in  
 15 comprehensively sanctioned jurisdictions, explaining “we currently have users from  
 16 sanction countries on [Binance].com[.] ...[and d]ownside risk is if fincen or ofac has  
 17 concrete evidence we have sanction [sic] users, they might try to investigate or blow it up  
 18 big on worldstage.” *Id.* Zhao further knew that without an effective AML compliance  
 19 program with appropriate KYC procedures, Binance would not be able to systematically  
 20 block illegal transactions between U.S. customers and customers subject to U.S. sanctions.  
*Id.* ¶ 9.l.

21 Zhao admits he did not implement controls that would have prevented Binance from  
 22 causing trades between U.S. customers and customers subject to U.S. sanctions, and “it  
 23 was reasonably foreseeable to [Zhao] that Binance’s matching engine—the tool that

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 26 <sup>10</sup> See Europol, Multi-million euro cryptocurrency laundering service Bestmixer.io taken down, May 22, 2019,  
 27 <https://www.europol.europa.eu/media-press/newsroom/news/multi-million-euro-cryptocurrency-laundering-service-bestmixerio-taken-down>.

1 matched customer bids and offers to execute cryptocurrency trades—would match U.S.  
 2 users and users in comprehensively sanctioned jurisdictions.” Plea Agreement ¶ 9.m.  
 3 Similarly, Binance has admitted that because of the significant number of users in countries  
 4 subject to comprehensive U.S. sanctions and the substantial number of U.S. customers  
 5 trading on Binance.com, “Binance’s matching engine would necessarily cause U.S. users  
 6 to transact with users in comprehensively sanctioned jurisdictions.” Binance Plea  
 7 Agreement, Attachment A ¶ 61. Binance admitted that it knew that by “causing and  
 8 facilitating such unlawful transactions it would be acting in violation of U.S. law.” *Id.*  
 9 Binance further transferred the proceeds of these illegal trades and profited off these  
 10 transfers.

11 Zhao also admits that between August 2017 and October 2022—according to the  
 12 company’s own data—“Binance caused . . . at least \$890 million in transactions between  
 13 U.S. users and users Binance identified as Iranians,” plus “millions more in transactions  
 14 between U.S. users and users in other comprehensively sanctioned jurisdictions, including  
 15 Cuba, Syria, and the Ukrainian regions of Crimea, Donetsk, and Luhansk.” *Id.* ¶ 9.o. The  
 16 company “profited significantly from its violations of law,” including through the  
 17 “significant fees” it earned “on transactions between U.S. customers and customers in  
 18 comprehensively sanctioned jurisdictions.” *Id.* ¶ 9.p. The hundreds of millions of dollars  
 19 involved in trades that violated U.S. sanctions, and the fees that Binance earned from  
 20 processing those trades, became proceeds of unlawful activity. Binance facilitated later  
 21 transfers of those proceeds, including when its customers withdrew their funds from the  
 22 exchange. Zhao knew about the users in comprehensively sanctioned areas, did not direct  
 23 Binance to implement controls that would have prevented Binance from matching U.S.  
 24 users with users subject to U.S. sanctions to conduct cryptocurrency transactions, and those  
 25 transactions were a clear and foreseeable result of Zhao’s decision to prioritize profit and  
 26 growth over compliance with the BSA.

1 For all these reasons, a preponderance of the evidence establishes that Zhao should  
 2 receive the two-level enhancement under USSG § 2S1.3(b)(1). He willfully failed to  
 3 maintain an effective AML program at Binance, knowing that an effective AML program  
 4 was necessary to prevent illicit actors from using the exchange. And he knew that without  
 5 such an effective AML program, illicit actors could and did use Binance to process  
 6 hundreds of millions of dollars of illicit proceeds. Zhao also knew that Binance would  
 7 cause trades that violated U.S. sanctions, creating proceeds of unlawful activity. In sum,  
 8 Zhao knew or believed that at least some of the funds Binance processed were proceeds of  
 9 unlawful activity. Accordingly, the two-level enhancement applies.

10 **B. Regardless of the Guidelines calculation, the Court should impose a 36-month  
 11 sentence to hold Zhao accountable for his intentional criminal conduct and  
 12 achieve the other goals of sentencing**

13 Given the gravity of Zhao's crimes, a sentence within the 12-to-18-month advisory  
 14 Guidelines range (or a 10-to-16-month range) does not appropriately take into  
 15 consideration the 18 U.S.C. § 3553(a) factors. And a sentence within such a range would  
 16 not adequately reflect the seriousness of Zhao's offense, promote respect for law, provide  
 17 just punishment, or offer adequate specific or general deterrence.

18 Instead, the Court should impose a sentence of 36 months' imprisonment. Combined  
 19 with the \$50 million fine recommended in the plea agreement, a 36-month custodial  
 20 sentence would reasonably balance the section 3553(a) factors. In particular, such a  
 21 sentence would provide adequate deterrence to Zhao and to others who may also be  
 22 tempted to put profits above compliance with U.S. law while knowing the serious collateral  
 23 consequences of allowing criminals and sanctioned persons and entities unfettered access  
 24 to the U.S. financial system. Zhao committed serious crimes in a deliberate scheme to grow  
 25 Binance as quickly as possible and then to maintain its dominance as the largest  
 26 cryptocurrency exchange. His crimes warrant meaningful prison time.

27 When Zhao pleaded guilty to violating the BSA, he agreed to a recommended fine  
 28 of \$50 million—a small fraction of his wealth but a historically large fine for an individual

1 U.S. defendant. For its part, Binance agreed to a combined penalty of over \$4.3 billion—  
 2 the largest amount ever paid by an MSB in connection with a guilty plea in a U.S. criminal  
 3 case. These exceptional financial penalties—which directly resulted from Zhao’s  
 4 conduct—demonstrate the nature and seriousness of Zhao’s offense. Those penalties are  
 5 tied directly to the profits Binance earned and the vast transactions it processed, reflecting  
 6 the extraordinary scope of the scheme. Accordingly, an upward variance from the 12-to-  
 7 18-month Guidelines range is justified here.

8 An upward variance is particularly appropriate here, as the Sentencing Guidelines  
 9 for BSA offenses are not designed to adequately punish either misconduct on this scale or  
 10 misconduct that harms U.S. national security. The BSA was developed to ensure that U.S.  
 11 financial institutions implement and maintain adequate controls to prevent drug traffickers,  
 12 terrorists, and other criminal actors from laundering illicit proceeds and accessing the U.S.  
 13 financial system. The law recognizes the power of U.S. financial institutions as gatekeepers  
 14 to the world’s financial system and tasks those financial institutions with commensurate  
 15 responsibility to know their customer base, monitor transactions, and take reasonable steps  
 16 to ensure that they do not offer a haven for criminals. Zhao deliberately disregarded this  
 17 responsibility, and thus Binance provided such a haven.

18 When Congress expanded the BSA to apply to MSBs in 1994, Congress focused on  
 19 contemporary challenges of small MSB operations offering drug traffickers an avenue to  
 20 launder proceeds in volumes measured in the thousands. *See Money Laundering*  
 21 *Suppression Act of 1994* (P.L. 103-325). Congress could not predict that 30 years later, a  
 22 cryptocurrency exchange could and would, in the space of less than two years, provide  
 23 rapid, irreversible money transmission services moving trillions of dollars annually to  
 24 individuals around the world, including U.S. persons and persons in comprehensively  
 25 sanctioned jurisdictions.

26 Indeed, the Guidelines reflect the BSA’s original focus on relatively small-dollar  
 27 operations, recommending a two-level enhancement “for a pattern of unlawful activity

1 involving more than \$100,000,” USSG § 2S1.3(b)(2), but offering no further enhancements  
 2 even where the unlawful activity involves transactions amounting to millions or billions of  
 3 dollars, as is the case here. By contrast, the loss table for basic economic offenses provides  
 4 more granular enhancements for the pecuniary harm caused by the criminal conduct, with  
 5 a 16-point enhancement for loss exceeding \$1.5 million and a 30-point enhancement for  
 6 loss in excess of \$550 million, USSG § 2B1.1(b)(1), corresponding to sentences of  
 7 imprisonment that could range from four to 20 years. Suffice it to say, the advisory  
 8 Guidelines range does not account for the pertinent factors in this case. The range would  
 9 be the same regardless of whether the defendant’s crime involved \$100,000 or \$1 trillion,  
 10 and no matter how many hundreds of millions of dollars in suspicious or criminal  
 11 transactions flowed through Binance’s platform.

12 Nor do the Guidelines for BSA offenses adequately address the harms to U.S.  
 13 national security caused by the scale of Binance’s sanctions violations. Had Zhao complied  
 14 with the BSA and implemented an effective AML program, Binance would not have  
 15 executed nearly \$900 million in transactions between its Iranian and U.S. customers that  
 16 undermined the objectives of a critical national security tool that the United States relies  
 17 upon to protect Americans from the harmful activities and policies of the Iranian  
 18 government. Nothing in the sentencing range advised by the Guidelines for the offense of  
 19 conviction takes into account the harm that Zhao’s conduct caused to U.S. national  
 20 security.

21 Given this context, and the significant harm caused by Zhao’s misconduct—  
 22 Binance processed trillions of dollars in unmonitored transactions, hundreds of millions of  
 23 dollars in transactions involving illicit proceeds, and over a billion dollars in transactions  
 24 that violated sanctions—any custodial sentence of less than three years would fail to reflect  
 25 the gravity of his offense.

1     **C. Zhao should receive a meaningful custodial sentence**

2           Respectfully, in no event should the Court impose a noncustodial sentence. As U.S.  
 3 Probation correctly notes, “A custodial sentence is necessary to appropriately punish the  
 4 defendant’s conduct and provide adequate general and specific deterrence.” USPO Rec. 7.  
 5 But the below-Guidelines sentence of just five months in custody that U.S. Probation  
 6 recommends does not satisfy those goals or the other section 3553(a) factors. As described  
 7 infra, the Guidelines do not adequately account for the scope and seriousness of Zhao’s  
 8 crime. U.S. Probation identifies mitigating factors including “Zhao’s extraordinary  
 9 acceptance of responsibility” and collateral consequences of prosecution including Zhao  
 10 stepping down as CEO of Binance. But, respectfully, these are not extraordinary acts or  
 11 consequences. Zhao made the smart choice to come to the United States and take  
 12 responsibility well after he violated the law because he knew the alternative was a life of  
 13 flight. Zhao made the right choice, but it is not one that warrants a 50% downward variance  
 14 in sentence. Similarly, the collateral consequences of Zhao’s plea were the result of Zhao’s  
 15 crime. When a crypto currency exchange serves U.S. customers, it is a U.S. financial  
 16 institution that must comply with U.S. law. Zhao violated that law and resigning as CEO  
 17 of that financial institution is an appropriate and foreseeable result of Zhao’s choice to  
 18 deliberately violate the law. None of these facts warrants a variance from the bottom of the  
 19 (already inadequate) Guidelines range and the Court should not so depart.

20           While some courts have imposed relatively light sentences for BSA violations, those  
 21 cases are readily distinguishable from Zhao’s crimes. For example, in 2022 the former  
 22 CEO of the cryptocurrency exchange BitMEX, Arthur Hayes, was sentenced to six months  
 23 home detention and two years of probation after pleading guilty to a BSA violation with  
 24 Guidelines range of 6 to 12 months. *United States v. Hayes*, 1:20-CR-500 (S.D.N.Y. May  
 25 20, 2022). But comparing that case to this one is inapposite, given the scope and severity  
 26 of Zhao’s crimes and the significant harm that they caused to U.S. national security.

1 To take but one data point illustrating the inapt comparison between the BSA  
 2 violations of BitMEX's former CEO Hayes and Zhao's massive crimes—in announcing its  
 3 enforcement actions against BitMEX and then Binance, FinCEN noted that BitMEX failed  
 4 to file SARs “on at least 588 specific suspicious transactions,”<sup>11</sup> while Binance failed to  
 5 report “well over 100,000 suspicious transactions that it processed as a result of its deficient  
 6 controls.”<sup>12</sup> Thus, by at least that metric, the BSA violations Zhao committed at Binance  
 7 were approximately 170 times more severe than those committed by Hayes at BitMEX,  
 8 and a sentence significantly more severe than that received by Hayes is warranted.

9 Nor did the BitMEX case present anywhere the harm to national security caused by  
 10 Binance's failure to implement and maintain adequate compliance controls, and the  
 11 sanctions violations that resulted. As described above, Binance allowed nearly \$900  
 12 million in transactions between its U.S. users and users in Iran, in addition millions of  
 13 dollars more in transactions between U.S. users and users in Cuba, Syria, and the Ukrainian  
 14 regions of Crimea, Donetsk, and Luhansk.

15 If Zhao's sentence is to have any meaningful deterrent effect on similarly situated  
 16 executives of large financial institutions that operate in the United States while flouting  
 17 U.S. law in the name of profits, Zhao must face meaningful prison time. A three-year  
 18 custodial sentence, together with the agreed \$50 million fine, would achieve specific and  
 19 general deterrence, and would reasonably balance the other 18 U.S.C. § 3553(a) factors. A  
 20 noncustodial sentence, by contrast, would send exactly the wrong message to other  
 21 potential offenders and to Zhao himself.

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23 <sup>11</sup> FinCEN, Press Release, FinCEN Announces \$100 million Enforcement Action Against Unregistered Futures  
 24 Commission Merchant BitMEX for Willful Violations of the Bank Secrecy Act, Aug. 10, 2021,  
[https://www.fincen.gov/news/news-releases/fincen-announces-100-million-enforcement-action-against-unregistered-futures#:~:text=WASHINGTON%20The%20Financial%20Crimes%20Enforcement,BSA\)%20and%20FinCEN's%20implementing%20regulations.](https://www.fincen.gov/news/news-releases/fincen-announces-100-million-enforcement-action-against-unregistered-futures#:~:text=WASHINGTON%20The%20Financial%20Crimes%20Enforcement,BSA)%20and%20FinCEN's%20implementing%20regulations.)

25 <sup>12</sup> U.S. Treasury Announces Largest Settlements in History with World's Largest Virtual Currency Exchange Binance  
 26 for Violations of U.S. Anti-Money Laundering and Sanctions Laws, Nov. 21, 2023,  
<https://home.treasury.gov/news/press-releases/jy1925>.

1        In mitigation, Zhao may argue that he, belatedly, implemented controls at Binance;  
 2 stepped aside as CEO; pleaded guilty pre-indictment and came to the United States from  
 3 the United Arab Emirates; stayed in the US. pursuant to the Court's order; and obeyed the  
 4 Court's directives, including by reporting his travel. Zhao may also argue that because he  
 5 was required to remain in the continental United States, he should not have to serve a  
 6 custodial sentence. And Zhao may point to the letters of support submitted by his friends  
 7 and fans of Binance. None of these arguments would justify a noncustodial sentence or  
 8 downward variance.

9        Many of Binance's most significant controls were implemented long after  
 10 December 2020, when Binance was notified of this investigation, are required to comply  
 11 with law, and are still untested and incomplete. For example, Binance's violation of Iran  
 12 sanctions continued through May 2022, with other sanctions violations continuing until  
 13 October 2022. Binance Plea Agreement, Attachment A ¶¶ 79–80. Yet the company did not  
 14 require customers to provide full KYC information until May 2022, despite KYC being  
 15 necessary to prevent just such sanctioned transactions. *See* Binance Plea Agreement,  
 16 Attachment A ¶ 53. Though Zhao directed Binance to remediate the sanctions violations  
 17 in 2018 and 2019, he did so knowing the remediation would be ineffective. Binance Plea  
 18 Agreement, Attachment A ¶¶ 70–71. As Zhao himself put it, “better to ask for forgiveness  
 19 than permission.”

20        Indeed, throughout the course of conduct outlined in this case, Zhao faced a choice:  
 21 ask for permission or ask for forgiveness. Once he knew he was caught, he faced a similar  
 22 choice: he could be charged and spend his life looking over his shoulder, unable to travel  
 23 or live freely, worried the U.S. government would vigorously seek his arrest; or he could  
 24 take responsibility, travel to the United States, plead guilty, and argue for a probationary  
 25 sentence, betting that he would be able to remain free in advance of sentencing. Zhao has  
 26 received credit for his choice to plead guilty. While he has complied with the Court's bail  
 27 order, his liberty was virtually unrestricted and he has traveled freely (from Telluride to

1 Los Angeles, and from Moab to New York). He has also received certainty. While he does  
2 not know precisely what sentence he will receive, he knows that when it is done, he can  
3 return to his life, not worrying about when the U.S. government will arrest him. While  
4 Zhao's decision to take responsibility and seek forgiveness was the right one, it does not  
5 warrant a non-custodial sentence. Such a sentence would minimize the gravity of his crime  
6 and send a message to others inclined to commit these crimes that the cost is low, that  
7 indeed it is better to ask for forgiveness than permission. The Court should reject these  
8 arguments and impose a 36-month sentence, demonstrating to Zhao and the world that the  
9 right choice, every time, is to comply with the law.

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## CONCLUSION

The Court should sentence Zhao to 36 months in prison and a \$50 million fine.

April 23, 2024

Respectfully submitted,

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*s/ Michael Dion*  

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